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SUBJECT: ZIMBABWEAN SUPREME COURT CHIEF JUSTICE HOLDS FIRM
IN FACE OF INTIMIDATION

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CLASSIFIED BY CHARGE D'AFFAIRES EARL IRVING. REASONS: 1.5
(B) AND (D).

REF: HARARE 507

SUMMARY

11. (C) THE CHIEF JUSTICE OF ZIMBABWE'S SUPREME COURT, ANTHONY GUBBAY, TOLD CHARGE ON JANUARY 26 THAT ZANU-PF WANTS TO FIND A WAY TO FORCE HIM AND HIS FOUR COLLEAGUES OFF THE COURT. IN A MEETING SEVERAL DAYS EARLIER, VICE PRESIDENT MUZENDA REPORTEDLY ACCUSED GUBBAY, WHO IS WHITE, OF BEING A RACIST BECAUSE HE HAS RULED AGAINST THE GOVERNMENT IN KEY CASES. THE VICE PRESIDENT ALSO DISMISSED THE CHIEF JUSTICE'S REQUEST FOR PROTECTION AGAINST INCREASING HARASSMENT BY SO-CALLED WAR VETERANS. GUBBAY WAS GRATEFUL FOR THE PRACTICAL AND MORAL SUPPORT HE HAS RECEIVED FROM THE DIPLOMATIC COMMUNITY, BUT EXPRESSED CONCERN THAT ANY PUBLIC STATEMENTS OF SUPPORT MIGHT BE COUNTERPRODUCTIVE. THE DEPARTMENT MAY WISH TO CONSIDER APPROPRIATE WAYS IN WHICH WE MIGHT SIGNAL INTERNATIONAL CONFIDENCE IN THE INDEPENDENCE OF THE JUDICIARY, FOR NOW THE LAST CHECK ON PRESIDENT MUGABE'S EXERCISE OF UNTRAMMELED POWER. END SUMMARY.

12. (C) CHARGE, ACCOMPANIED BY POLOFF, CALLED ON ZIMBABWEAN CHIEF JUSTICE ANTHONY GUBBAY ON JANUARY 26. CHARGE EXPRESSED U.S. CONCERN ABOUT THE EXECUTIVE BRANCH'S INCREASING CRITICISM OF THE JUDICIARY, AND INTIMIDATION AND HARASSMENT OF ITS JUSTICES BY SO-CALLED WAR VETERANS, AND
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ASKED HOW GUBBAY WAS HOLDING UP. GUBBAY SAID THE SUPREME COURT HAS ALWAYS RECEIVED SIGNIFICANT SUPPORT FROM THE UNITED STATES AND ITS EMBASSY IN HARARE, AND HE WAS GRATEFUL. HE ACKNOWLEDGED THAT IT WAS INCREASINGLY DIFFICULT FOR THE COURT'S JUSTICES TO DO THEIR WORK UNDER CURRENT CIRCUMSTANCES.

MEETING WITH VICE PRESIDENT MUZENDA

13. (C) GUBBAY SAID HE HAD BEEN TERRIBLY UPSET AFTER HIS MEETING ON JANUARY 22 WITH VICE PRESIDENT MUZENDA. (NOTE: GUBBAY HAD SOUGHT THE MEETING TO REQUEST PROTECTION AGAINST INCREASING INTIMIDATION BY WAR VETERANS. IN NOVEMBER, A GROUP OF ANGRY VETERANS INVADED THE SUPREME COURT TO PROTEST THE COURT'S RULING AGAINST THE GOVERNMENT'S FAST TRACK RESETTLEMENT PROGRAM. IN DECEMBER, WAR VETERANS ISSUED A STATEMENT SAYING SUPREME COURT JUSTICES WOULD BE ATTACKED IN THEIR HOMES IF THEY DID NOT RESIGN WITHIN TWO WEEKS. END NOTE.) MUZENDA REPORTEDLY REFUSED TO TAKE

STEPS TO IMPROVE THE SECURITY OF THE COURT AND ITS JUSTICES, SAYING IT WAS THE WAR VETERANS WHO FELT THREATENED BY THE COURT. GUBBAY WAS SURPRISED AT MUZENDA'S DEEP ANTAGONISM AGAINST HIM. THE VICE-PRESIDENT ACCUSED GUBBAY, WHO IS WHITE, OF BEING RACIST, BLAMED HIM FOR ALL THE SIGNIFICANT CASES THE GOVERNMENT HAS LOST, AND SAID GUBBAY'S RETIREMENT WAS UNDER DISCUSSION BY THE CABINET.

DETERMINED TO REMAIN FIRM

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14. (C) GUBBAY SAID HE AND HIS COLLEAGUES ON THE COUNTRY'S HIGHEST BENCH WORK WELL TOGETHER. NONE OF THEM RENDER JUDGMENTS BASED ON POLITICAL CONSIDERATIONS, HE INSISTED, BUT RULE AS THEY THINK IS FAIR AND JUST. HE IS CONVINCED THAT THE EXECUTIVE BRANCH WANTS HIM AND THE COURT'S FOUR OTHER JUSTICES OUT, AND THAT MINISTER OF INFORMATION AND PUBLICITY JONATHAN MOYO AND JUSTICE MINISTER PATRICK CHINAMASA ARE LEADING THE CHARGE. (NOTE: CHINAMASA RECENTLY TOLD JOURNALISTS THE JUSTICES SHOULD BE REPLACED BECAUSE THEY WERE COLONIALIST HOLDOVERS FROM THE IAN SMITH REGIME. END NOTE.) GUBBAY AND HIS FELLOW, JUSTICES, HOWEVER, ARE "DETERMINED TO REMAIN FIRM AND BATTLE ON." GUBBAY NOTED THAT HE REACHES HIS MANDATORY RETIREMENT AGE OF 70 IN APRIL 2002. HE MIGHT TAKE FOUR MONTHS OF ACCUMULATED LEAVE PRIOR TO THAT DATE, HOWEVER, MEANING A DE FACTO DEPARTURE FROM THE COURT AT THE END OF THIS YEAR. GUBBAY NOTED, WITHOUT ELABORATING, THAT TWO OTHER JUSTICES MIGHT ALSO CHOOSE TO STEP DOWN BY THE END OF 2001.

REMOVING A JUDGE NOT EASY

15. (C) GUBBAY EXPLAINED THAT IT IS EXTREMELY DIFFICULT TO REMOVE A JUDGE PRIOR TO THE MANDATORY RETIREMENT AGE OF 70. HE CITED THE ABSENCE OF A JUDICIAL CODE OF CONDUCT AS THE

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PRINCIPAL GUARANTEE OF THE JUDGES' TENURE. IN FACT, IN ZIMBABWE'S HISTORY, ONLY ONE MEMBER OF THE BENCH HAS BEEN EXPELLED FOR MISCONDUCT. IF ANY JUDGE BELOW THE CHIEF JUSTICE IS ACCUSED OF MALFEASANCE, THE PRESIDENT CANNOT TAKE ANY ACTION UNLESS THE CHIEF JUSTICE REQUESTS THAT HE APPOINT A SPECIAL INVESTIGATIVE TRIBUNAL. IF THE CHIEF JUSTICE HIMSELF IS ACCUSED OF MISCONDUCT, THE PRESIDENT CAN TAKE THE INITIATIVE IN APPOINTING THE TRIBUNAL, WHICH NORMALLY COMPRISES A SENIOR JUDGE FROM A NEIGHBORING COUNTRY AND TWO JURISTS RECOMMENDED BY THE NATIONAL LAW SOCIETY OF ZIMBABWE. BOTH THE TRIBUNAL AND THE JUDICIAL SERVICES COMMISSION, ON WHICH GUBBAY SITS, MUST RECOMMEND A JUDGE'S REMOVAL IN ORDER FOR THE PRESIDENT TO TAKE SUCH A STEP.

16. (C) GIVEN THE DIFFICULTY OF THIS AVENUE, GUBBAY SURMISED THAT PRESIDENT MUGABE MIGHT TRY TO FORCE THROUGH

PARLIAMENT A RECENTLY-INTRODUCED BILL CALLING FOR THE CHIEF JUSTICE'S IMPEACHMENT, BUT HE WAS DISMISSIVE OF SUCH AN EFFORT, STATING THAT THE LEGISLATIVE BODY HAS NO JURISDICTION OVER THE SUPREME COURT. GUBBAY SAID HE WAS PROUD OF HIS RECORD AS CHIEF JUSTICE, AND THAT THE GOVERNMENT WOULD HAVE TO MANUFACTURE EVIDENCE IF IT INTENDED TO TRY TO ACCUSE HIM OF MISCONDUCT.

SECURITY HIS MAIN CONCERN

17. (C) GUBBAY SAID HIS MAIN WORRY FOR NOW IS PROTECTING THE SECURITY OF THE COURT AND ITS JUSTICES. ASKED WHETHER THE GOZ PROVIDES A BODYGUARD FOR HIM, HE SAID NO, AND HE
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WAS NOT INTERESTED IN ONE, AS SUCH PROTECTION CERTAINLY WOULD BE PROVIDED BY AN AGENT OF THE CENTRAL INTELLIGENCE ORGANIZATION (CIO). INDIVIDUAL POLICE OFFICERS ARE POSTED AT EACH OF THE JUSTICES' HOUSES, BUT THEY ARE YOUNG AND WOULD BE UNABLE TO PREVENT AN INVASION BY GROUPS SEEKING TO DO HARM. GUBBAY NOTED THAT THE SEVERAL DEMONSTRATIONS HELD BY SO-CALLED WAR VETERANS IN FRONT OF THE COURT WERE EXTREMELY WELL-ORGANIZED, CONSISTED OF A SIGNIFICANT NUMBER OF ILLITERATE WOMEN BUSED IN FROM THE HIGH-DENSITY SUBURBS, WITH LITTLE IDEA WHY THEY WERE THERE, HOLDING UP PROFESSIONALLY-PRINTED PLACARDS.

WHY NOT JUST IGNORE JUDICIAL RULINGS

18. (C) CHARGE ASKED WHY THE GOVERNMENT FELT IT NECESSARY TO GO BEYOND MERELY IGNORING THE SUPREME COURT'S RULINGS -- ON THE FAST TRACK RESETTLEMENT EXERCISE, FOR EXAMPLE -- TO QUESTIONING THE MOTIVES OF ITS JUSTICES AND SUBJECTING THEM TO AN APPARENTLY ORCHESTRATED CAMPAIGN OF INTIMIDATION. THE GOVERNMENT, GUBBAY REPLIED, WOULD MUCH PREFER TO HAVE THE JUDICIARY ENDORSE THE GOVERNMENT'S FAST TRACK PROGRAM AS CONSISTENT WITH ZIMBABWEAN LAW AND THE CONSTITUTION, WHICH IT IS NOT. JUDICIAL RULINGS THAT THE GOVERNMENT'S ACTIONS ARE UNLAWFUL OR UNCONSTITUTIONAL GIVES IT A TERRIBLE IMAGE IN THE EYES OF THE INTERNATIONAL COMMUNITY. NO SENSIBLE PERSON OPPOSES LAND REFORM, GUBBAY INSISTED, BUT WHO, HE ASKED, IS RESPONSIBLE FOR THE DELAY? THE GOVERNMENT HAS HAD 20 YEARS TO IMPLEMENT A FAIR PROCESS, BUT HAS FAILED TO DO SO.

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ZANU-PF WILL REFUSE TO GO EVEN IF IT LOSES IN 2002

19. (C) GUBBAY CONFIRMED THAT THE UPCOMING PRESIDENTIAL ELECTION MUST BE HELD BETWEEN JANUARY 1 AND MARCH 31, 2002. ASKED WHETHER THE PRESIDENT COULD RESIGN AND LEGALLY CALL A SNAP ELECTION LATER THIS YEAR, THE CHIEF JUSTICE WAS UNSURE, WITHOUT ADDITIONAL STUDY, WHETHER THE CONSTITUTION WOULD PERMIT SUCH A MOVE. GUBBAY (STRICTLY PROTECT) OFFERED HIS PERSONAL VIEW THAT, EVEN IF ZANU-PF LOSES THE PRESIDENTIAL ELECTION, THE PARTY WILL NOT AGREE TO HAND OVER POWER.

U.S. ASSISTANCE

10. (C) CHARGE PRAISED GUBBAY'S COURAGE DURING THESE TRYING TIMES, AND ASKED HOW THE UNITED STATES MIGHT BE OF ASSISTANCE. GUBBAY WAS GRATEFUL FOR THE OFFER, BUT ASKED THAT THE U.S. NOT ISSUE ANY PUBLIC STATEMENTS OF SUPPORT, AS THIS WOULD ONLY OPEN US UP TO CRITICISM THAT WE WERE TAKING SIDES. HE EXPRESSED GENUINE APPRECIATION FOR THE OUTSTANDING SUPPORT THE JUDICIARY HAS RECEIVED FROM THE DIPLOMATIC COMMUNITY HERE, AND NOTED THAT HE HAS RECEIVED LETTERS OF ENCOURAGEMENT FROM AROUND THE WORLD.

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COMMENT

11. (C) GUBBAY WAS APPOINTED CHIEF JUSTICE BY PRESIDENT MUGABE IN 1990. HE IS A THOUGHTFUL, WELL-RESPECTED JURIST, WHO, AS ONE OBSERVER RECENTLY COMMENTED, DOES NOT HAVE A POLITICAL BONE IN HIS BODY. THE GOVERNMENT'S ORCHESTRATED EFFORTS TO INTIMIDATE AND SMEAR GUBBAY AND OTHER JUSTICES CLEARLY TROUBLE HIM, BUT WE ARE IMPRESSED BY HIS DETERMINATION NOT TO GIVE IN TO SUCH HARASSMENT. VICE-PRESIDENT MUZENDA'S RIDICULOUS COMMENT THAT WAR VETERANS FEEL THREATENED BY THE COURT'S RULINGS AND HIS REFUSAL TO AUTHORIZE INCREASED SECURITY FOR GUBBAY AND HIS COLLEAGUES SUGGEST THAT WE ARE LIKELY TO SEE CONTINUING ATTACKS ON THE JUDICIARY. GIVEN THE DIFFICULTY OF REMOVING SITTING JUDGES, MUGABE'S GOAL APPEARS TO BE TO TRY TO HOUND GUBBAY AND OTHER INDEPENDENT-MINDED JUDGES INTO RESIGNING SO THAT HE CAN REPLACE THEM WITH THOSE WHO ARE WILLING TO DO HIS BIDDING.

12. (C) THE DEPARTMENT MAY WISH TO CONSIDER CONVEYING INTERNATIONAL CONFIDENCE IN THE SUPREME COURT'S INDEPENDENCE, IN A WAY THAT BOTH BOLSTERS THE BESIEGED JUSTICES AND SENDS A MESSAGE TO ZANU-PF THAT ITS ATTACKS ON THE JUDICIARY HAVE NOT GONE UNNOTICED. GIVEN GUBBAY'S CONCERN THAT A PUBLIC STATEMENT ALONG THESE LINES MIGHT BE COUNTERPRODUCTIVE, PERHAPS A LETTER OF SUPPORT FROM U.S. CHIEF JUSTICE REHNQUIST TO GUBBAY MIGHT BE AN EFFECTIVE APPROACH.

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